

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS**

ORIGINAL

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
OCT 25 2018
CLERK, U.S. DISTRICT COURT
By AN 12:23
Deputy

MOTION UNDER 28 U.S.C. SECTION 2255,
TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A
PERSON IN FEDERAL CUSTODY

UNITED STATES OF AMERICA

BOP. GILES W. DALBY C. F.
PLACE OF CONFINEMENT

vs.

53753-177
PRISONER ID NUMBER

ARNULFO RODRIGUEZ
MOVANT (full name of movant)

4:16-CR-00029-0(04)
CRIMINAL CASE NUMBER

4:18-cv-876-0

(If a movant has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion in the federal court which entered the judgment.)

INSTRUCTIONS - READ CAREFULLY

1. This motion must be legibly handwritten or typewritten, and signed by the movant under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
2. Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities needs to be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
3. Upon receipt, your motion will be filed if it is in proper order. No fee is required with this motion.

4. If you do not have the necessary funds for transcripts, counsel, appeal, and other costs connected with a motion of this type, you may request permission to proceed *in forma pauperis*, in which event you must execute the declaration provided with this motion, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed *in forma pauperis*, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
5. Only judgments entered by one court may be challenged in a single motion. If you seek to challenge judgments entered by different judges or divisions either in the same district or in different districts, you must file separate motions as to each such judgment.
6. Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the motion you file seeking relief from any judgment of conviction.
7. When the motion is fully completed, the original and two copies must be mailed to the Clerk of the United States District Court for the Northern District of Texas at the appropriate divisional office whose address is:

Abilene Division
P.O. Box 1218
Abilene, TX 79604

Amarillo Division
205 S.E. 5th St, Rm 133
Amarillo, TX 79101

Dallas Division
1100 Commerce, Rm 1452
Dallas, TX 75242

Fort Worth Division
501 W. 10th St, Rm 310
Fort Worth, TX 76102

Lubbock Division
1205 Texas Ave., Rm 209
Lubbock, TX 79401

San Angelo Division
33 East Twohig St, Rm 202
San Angelo, TX 76903

Wichita Falls Division
P.O. Box 1234
Wichita Falls, TX 76307

8. Motions which do not conform to these instructions will be returned with a notation as to the deficiency.

MOTION

1. Name and location of court that entered the judgment of conviction you are challenging:

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF TEXAS, FORT WORTH DIVISION
501 W. 10TH STREET, ROOM 310, FORT WORTH, TEXAS 76102.

2. Date of the judgment of conviction:

JUNE 21, 2016, Signed on June 23, 2016 by the Honorable Judge Reed O'Connor.

3. Length of sentence: 77 months

4. Nature of offense involved (all counts):

Conspiracy with intent to distribute cocaine, in violation to 21 U. S. C. §846 and
21 U. S. C. §853(a) Forfeiture Notice.

5. (a) What was your plea? (Check one)

Not guilty ☐ Guilty ☒ Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or
or indictment, what did you plead guilty to and what did you plead not guilty to?

I have plead guilty to Count 1 which is Conspiracy With Intent To Distribute Cocaine
Title 21 U. S. C. §846 and 21 U. S. C. §853(a) Forfeiture Notice.

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☐ Judge Only ☒

7. Did you testify at the trial? (Check one) Yes ☐ No ☒

8. Did you appeal from the judgment of conviction? (Check one) Yes ☒ No ☐

9. If you did appeal, answer the following:

Name of Court: UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Result: Judgment Affirmed

Date of result: September 28, 2017.

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "Yes" give the following information:

Name of Court: No Applicable

Nature of proceeding:

No Applicable

Grounds raised:

No Applicable

Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

Result: Denied

Date of result: December 5th, 2017.

As to any *second* petition, application or motion, give the same information:

Name of Court: UNITED STATES SUPREME COURT

Nature of proceeding:

Petition for Writ of Certiorari

Grounds raised:

Unknown

Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

Result: DENIAL

Date of result: MARCH 17, 2018.

As to any *third* petition, application or motion, give the same information:

Name of Court: No Applicable.

Nature of proceeding:

No Applicable.

Grounds raised:

No Applicable.

Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

Result: No Applicable.

Date of result: No Applicable

Did you appeal to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

First petition, etc. Yes ☒ No ☐

Second petition, etc. Yes ☐ No ☒

Third petition, etc. Yes ☐ No ☒

If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

Attorney's misadvice of any other claims or allegations would be worthless.

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed. However, you should raise in this petition all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

DO NOT CHECK ANY OF THESE LISTED GROUNDS. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right to appeal.

A. Ground One:

Ineffective Counsel Assistance:

Supporting FACTS (tell your story briefly without citing cases or law):

Attorneys did not perform prompt and accurate investigations of circumstances in the case; Failing to made several significant petitions in behalf the Defendant to the Court as: Co-defendants Testimonies Review; Laboratories Drug Test to confirm Quantities; Dismissal of the firearms and money issues no related to the offense; Police misconduct; False Statements Revisions; PSI Production Mistakes; Defendant's history behavior prior to the crime; among others.

B. Ground Two:

Ineffective Counsel Assistance

Supporting FACTS (tell your story briefly without citing cases or law):

Failure to properly and persistantly represent and probe defendant's allegations related to the "stash House" issue.

C. Ground Three:

Ineffective Counsel Assistance

Supporting FACTS (tell your story briefly without citing cases or law):

Failure to investigate and find a proper explanation and justification by the Court on the improper calculation on the above guidelines sentence of 70-87 months of the guidelines ranges used and imposed to the Defendant by the Judge instead the 57-71 moths range.

D. Ground Four:

Supporting FACTS (tell your story briefly without citing cases or law):

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them:

This is basically the first review of the case made by the Defendant in his incomplete case files.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐

No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing:

Robert J. Herrington, P.O. Box 262234, Plano, Texas 75026-2234.

(b) At arraignment and plea:

Robert J. Harrington.

(c) At trial:

Robert J. Harrington.

(d) At sentencing:

Robert J. Harrington.

(e) On appeal

Robert J. Harrington.

(f) In any post-conviction proceeding:

Robert J. Harrington and Danny D. Burns.

Danny D. Burns: 115 North Henderson Street, Fort Worth, Texas 76102-1940

(g) On appeal from any adverse ruling in a post-conviction proceeding:

Danny D. Burns.

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

No Applicable

(b) And give date and length of sentence to be served in the future:

No Applicable

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, movant prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Signature

Firm Name (if any)

Address

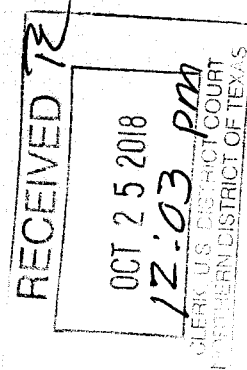
City, State & Zip Code

Telephone (including area code)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.
Executed on October 24, 2018. (date).

Arnulfo Rodriguez
Signature of Movant

ARNULFO RODRIGUEZ #53753-177
BOP GILES W. DALBY C. F. (A1-27L)
805 NORTH AVENUE F
POST, TEXAS 79356



UNITED STATES DISTRICT COURT CLERK
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION
501 WEST 10TH STREET, ROOM 310
FORT WORTH, TEXAS 76102